

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE: NEW ENGLAND COMPOUNDING) MDL NO. 13-02419-RWZ
PHARMACY CASES LITIGATION)
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BEFORE: THE HONORABLE RYA W. ZOBEL AND
THE HONORABLE JENNIFER C. BOAL

STATUS CONFERENCE

John Joseph Moakley United States Courthouse
Courtroom No. 12
One Courthouse Way
Boston, MA 02210

June 22, 2016
2:00 p.m.

Catherine A. Handel, RPR-CM, CRR
Official Court Reporter
John Joseph Moakley United States Courthouse
One Courthouse Way, Room 5205
Boston, MA 02210
E-mail: hhcatherine2@yahoo.com

EXHIBIT

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2 APPEARANCES:3 For The Plaintiffs:4 Hagens, Berman, Sobol, Shapiro LLP, by THOMAS M. SOBOL,
5 ESQ., and KRISTEN JOHNSON, ESQ., 55 Cambridge Parkway, Suite 301,
6 Cambridge, Massachusetts 02142;7
8 Branstetter, Stranch & Jennings, PLLC, by J. GERARD STRANCH,
9 IV, ESQ., 227 Second Avenue North, Nashville, Tennessee
10 37201-1631;11 Ellis & Rapacki LLP, by FREDRIC L. ELLIS, ESQ., 85 Merrimac
12 Street, Suite 500, Boston, Massachusetts 02114;13 Lieff Cabraser Heimann & Bernstein, LLP, by ANNIKA K.
14 MARTIN, ESQ., 250 Hudson Street, 8th Floor, New York, New York
15 10013-1413;16 Lieff Cabraser Heimann & Bernstein, LLP, by MARK P. CHALOS,
17 ESQ., 150 Fourth Avenue North, Suite 1650, Nashville, Tennessee
18 37219;19 Cohen, Placitella & Roth, P.C., by MICHAEL COREN, ESQ., 2
20 Commerce Square, 2001 Market Street, Suite 2900, Philadelphia,
21 Pennsylvania (Appearing telephonically);22 The Law Offices of Peter Angelos, by PATRICIA KASPUTYS,
23 ESQ., 100 North Charles Street, Baltimore, Maryland 21201
24 (Appearing telephonically.)25 FOR PAUL D. MOORE, IN HIS CAPACITY AS CHAPTER 11 TRUSTEE OF
NECP, INC.:Duane Morris LLP by KERI L. WINTLE, ESQ., 100 High Street,
Suite 2400, Boston, Massachusetts 02110-1724;

(Appearances continued on the next page.)

1 APPEARANCES (Cont'd):

2
3 FOR THE DEFENDANTS:

4
5 Fulbright & Jaworski, LLP, by MARCY H. GREER, ESQ., and
6 YVONNE K. PUIG, ESQ., 98 San Jacinto Boulevard, Suite 1100,
Austin, Texas 78701;

7
8 Law Offices of Jay Blumberg, by JAY J. BLUMBERG, ESQ., 158
Delaware Street, P.O. Box 68, Woodbury, New Jersey 08096;

9
10 Gideon, Cooper & Essary, PLC, by CHRIS J. TARDIO, ESQ., and
MATTHEW H. CLINE, ESQ., 315 Deaderick Street, Suite 1100,
11 Nashville, Tennessee 37238;

12
13 Nutter, McClennen & Fish, LLP, by SARAH P. KELLY, ESQ.,
Seaport West, 155 Seaport Boulevard, Boston, Massachusetts
02210-2604;

14
15 Pessin Katz Law, P.A., by GREGORY K. KIRBY, ESQ., 901
Dulaney Valley Road, Suite 400, Towson, Maryland 21204;

16
17 Wickstrom Morse, LLP, by DEBORAH GRESCO-BLACKBURN, ESQ.,
60 Church Street, Whitinsville, Massachusetts 01588 (Appearing
18 telephonically);
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1 And the one thing I want to -- I would be remiss -- I
2 did receive an email from one of the cases, the Over Street
3 case, which is represented -- I think the plaintiff is
4 represented by Ms. Dougherty, that did object, and it really
5 creates an interesting issue.

6 She directly filed in the District of Massachusetts
7 instead of filing in New Jersey at a point in time when she
8 was entitled to do that because of the MDL, and we would ask
9 that all of the cases, including that one, get transferred
10 back to New Jersey. It doesn't make any sense to keep one
11 case up here in the state of Massachusetts.

12 JUDGE ZOBEL: I'm sorry, what's the number of that
13 case or the name of it?

14 MR. BLUMBERG: It's Overstreet, John Overstreet. I
15 don't have the number, your Honor.

16 JUDGE ZOBEL: Okay.

17 MS. JOHNSON: As a procedural matter, I don't believe
18 the Court can, pursuant to a suggestion for remand, send that
19 case back under 1404. I think there has to be a separate
20 motion for transfer.

21 JUDGE ZOBEL: Es.

22 MR. BLUMBERG: I'll file the appropriate motion, your
23 Honor.

24 JUDGE ZOBEL: Okay.

25 MS. JOHNSON: And then that brings us, finally, your

1 Honor, to Specialty Surgery Center, which Mr. Stranch will
2 address.

3 JUDGE BOAL: Can I just ask, since Premier and Box
4 Hill are together for purposes of scheduling at this point, if
5 the Premier cases are no longer here -- and, obviously, Judge
6 Zobel needs to decide whether the Box Hill cases that are here
7 will remain here -- is there an opportunity to shrink the
8 schedule?

9 MS. JOHNSON: I would defer to Ms. Kasputys for her
10 views on that.

11 MS. KASPUTYS: Absolutely. I think we can certainly
12 discuss that, your Honor.

13 JUDGE BOAL: I understand you may dispute that, but,
14 obviously, it's up to Judge Zobel what she's going to go with
15 the Box Hill cases, but if they still here, I would certainly
16 ask the parties to consider that.

17 MR. KIRBY: Well, let me just add my two cents in
18 response. And that is, I think when the deadlines were set,
19 it took into consideration the timing of which, you know, it
20 takes to designate experts and do deposition discovery, and
21 the like. And so, I think that it wasn't that the Box Hill
22 schedule was set based on having another -- having Premier
23 here already. I think -- you know, that would be maybe down
24 the road with the trial schedule.

25 JUDGE BOAL: We would be talking eight versus 60

1 plaintiffs, right? And I don't know what experts the
2 plaintiffs would be using for common issue or if there's
3 overlap with what's already been done with Tennessee, so that
4 that might be able to be shortened in this trial.

5 MR. KIRBY: Let me just add one more, if I may -- one
6 more point, if I may, and that's with regards to consistency
7 and efficiency.

8 There are depositions that we would take in the
9 common-issue phase of the MDL for our eight cases. That would
10 include, for example, the Maryland Board of Pharmacy,
11 representatives of the Maryland Board of Pharmacy, Maryland
12 Department of Health, but the same thing would happen in the
13 state court cases, and I don't really just mean mine, the Box
14 Hill cases. As a matter of fact, I think yesterday one of the
15 other clinic defendants that is unrelated to me in the state
16 court cases served a notice or a subpoena for a deposition on
17 the Maryland Board of Pharmacy and the Maryland Department of
18 Health.

19 So, my point is, if we're back in Maryland -- or our
20 case is back and join the other 80 in Maryland, it would
21 streamline the process. So that the -- it can happen once.

22 JUDGE ZOBEL: I don't understand that. If you
23 respect the Box Hill defendants, why can't you all agree that
24 whatever discovery is taken in one jurisdiction applies to the
25 other jurisdiction? You're going to have the same experts and

1 the same -- substantially the same part -- same witnesses.

2 MR. KIRBY: Well, I'm represented by different
3 counsel. I mean, I don't --

4 JUDGE ZOBEL: So?

5 MR. KIRBY: There's another example with fact
6 witnesses and there are fact witnesses who -- one used to be
7 employed by Box Hill, but is now employed at one of the other
8 clinic defendants who is being sued, and it's walking a tight
9 rope because the plaintiffs want to take the deposition for
10 purposes of the MDL, but the concern is -- and it's not --

11 JUDGE ZOBEL: Which MDL, the ones you've manufactured
12 in Maryland or the one that's here?

13 MR. KIRBY: These eight MDL cases. The other 26 were
14 never in the MDL. They were in --

15 JUDGE ZOBEL: But You called it like the MDL. You
16 said you --

17 MR. KIRBY: I'm sorry.

18 So, Ms. Kasputys is on the phone, noted the
19 deposition of these two employees for purposes of this MDL,
20 but they're certainly employees of another healthcare provider
21 clinic defendant in the state court cases, and the concern is
22 that their testimony could -- and some of the questions are
23 geared towards, Well, what does this other ambulatory surgery
24 center do, you know, in terms of its processes, and stuff, and
25 the concern is that those questions would have an implication